

# EXHIBIT 4

(part II of II)

TO PLAINTIFF'S OPPOSITION TO  
DEFENDANT'S MOTION TO  
RECONSIDER THE DECISION  
DENYING SUMMARY JUDGMENT  
AND TO STRIKE THE AFFIDAVITS

FILED DECEMBER 14, 2007

IN

04-40219 FDS

1—10:51

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[1] A: And your definition of compression is — state  
[2] that again.  
[3] Q: (By Mr. Hilton) I'll move on.  
[4] So, maybe let's introduce another exhibit.  
[5] Might help.  
[6] MR. HILTON: What are we now? We're at  
[7] eighty — 89. That's right. That was 88.  
[8] MR. MIMS: What was 88?  
[9] MR. HILTON: This.  
[10] (Exhibit TX-89 marked)  
[11] Q: (By Mr. Hilton) Have you seen this document  
[12] before? Oh, you don't have it yet. Sorry. Oh, there  
[13] it is.  
[14] A: No, I have not.  
[15] Q: This is a declaration that was also filed in  
[16] this case by Mr. Binz DeWalch. I'd like to direct your  
[17] attention to page 3 which shows a photograph that I  
[18] don't think was included in the set this morning, but  
[19] it's similar, I suppose.  
[20] I'm going to read the last sentence on  
[21] this page and ask you if you understand what it — what  
[22] it means.  
[23] A: Uh-huh. Sure.  
[24] Q: "Because the clamping member moves outside the  
[25] first and second flanges, it contacts the side wall

1—10:53

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[1] outside the width of the first flange, thereby acting in  
[2] concert with the first flange to place the side wall in  
[3] sheer and bending rather than compression."  
[4] Do you have an understanding of what is  
[5] meant by that?  
[6] A: Uh-huh.  
[7] Q: And do you have an understanding of what is  
[8] meant by compression here in this context?  
[9] A: The way you're defining it, I'm a little  
[10] confused.  
[11] Q: Well —  
[12] A: The way I define it is a little bit different.  
[13] Q: Okay. Let's — let me — let me hear the way  
[14] you would define it, then, if you don't understand.  
[15] A: I would — two directly opposing forces  
[16] trapping an object between, imparting a force and thus  
[17] putting the pressure on.  
[18] Q: So, as I understand, then, non-directly  
[19] opposing forces are not compression under your  
[20] definition.  
[21] A: On these offset forces, I would not define it  
[22] as compression.  
[23] Q: Okay. I understand.  
[24] If we — let's return to another exhibit  
[25] that was entered earlier, and it is TX-32. It's this

1—10:55

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[1] (indicates).  
[2] A: Okay.  
[3] Q: That makes it easier.  
[4] A: All right. That one sheet.  
[5] Q: Yes.  
[6] A: Okay.  
[7] Q: Do you see a space that is colored in orange?  
[8] A: I do.  
[9] Q: Is this space three dimensional?  
[10] A: Not on the — not on the drawing.  
[11] Q: I don't understand your answer.  
[12] MR. MIMS: It's a two-dimensional —  
[13] Q: (By Mr. Hilton) I'm not asking —  
[14] MR. MIMS: — drawing.  
[15] A: The drawing is two dimensional.  
[16] Q: (By Mr. Hilton) — if the drawing is two  
[17] dimensional.  
[18] A: Okay.  
[19] Q: I understand that the drawing is two  
[20] dimensional. Do you understand that this represents a  
[21] three-dimensional object?  
[22] A: I do.  
[23] Q: In isometric view?  
[24] A: I do.  
[25] Q: Is the orange space represented to be three

1—10:56

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[1] dimensional?  
[2] A: It is.  
[3] Q: Thank you.  
[4] That drawing — I'd hoped to avoid another  
[5] exhibit; but, unfortunately, I do need to do that.  
[6] (Exhibit TX-90 marked)  
[7] Q: Have you seen this document before? You don't  
[8] have — you have the —  
[9] A: I do.  
[10] Q: Have you seen this document before?  
[11] A: No.  
[12] Q: And this is now 80 — this is 90. Is that  
[13] right?  
[14] A: That's right.  
[15] Q: Thank you. Thank you.  
[16] I want to direct your attention to page 8.  
[17] This is also a declaration that was filed by Binz  
[18] DeWalch in this case.  
[19] A: Okay.  
[20] MR. MIMS: Page 8?  
[21] MR. HILTON: Yes.  
[22] MR. MIMS: Thank you.  
[23] Q: (By Mr. Hilton) I'm going to read Paragraph 12  
[24] on this page. Referring to Drawing No. 601051, which is  
[25] part of Exhibit 8 and is — the exhibits are not

1—10:57

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[1] attached to this, by the way, for convenience of all —  
 [2] and is a drawing for the bracket used in both ProLock  
 [3] Products:

[4] "The wedge-shaped space can be seen by  
 [5] drawing a line from the bottom end of the first flange  
 [6] of the mounting bracket, which can be identified by the  
 [7] 0.385 inches dimension, to the bottom end of the second  
 [8] flange, which can be identified by the 1.040 inches  
 [9] dimension."

[10] Do you see that paragraph?

[11] A: I see it, yes.

[12] Q: All right. I have those drawings, and I'm  
 [13] going to pull them out. I want to ask first on page 5  
 [14] of this exhibit that we're looking at, if you flip back,  
 [15] there's a color picture that I believe is a copy of what  
 [16] was entered as TX-32.

[17] A: Uh-huh.

[18] Q: Do you see in — I guess it's purple in the  
 [19] affidavit, in the declaration. In Exhibit — in  
 [20] Exhibit TX-90 we have what appears to be a blue color  
 [21] and a purple color. Do you see that?

[22] Are you color blind? Let's make sure that  
 [23] we're not looking at —

[24] A: No.

[25] Q: — that view.

1—10:59

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[1] A: No —

[2] Q: That you're aware of?

[3] A: — not that I'm aware of.

[4] Q: Okay. Thank you.

[5] A: It's not —

[6] Q: Okay. Do you see a blue color and a purple  
 [7] color?

[8] A: I do.

[9] Q: The third flange is colored blue, I believe,  
 [10] and the second flange is colored purple?

[11] A: Yes.

[12] Q: Do you have an understanding of how this  
 [13] element works in the Inner-Tite product?

[14] MR. MIMS: Objection, vague.

[15] MR. HILTON: Okay. I'll —

[16] MR. MIMS: What element you mean?

[17] MR. HILTON: Yeah, that's fine.

[18] Q: (By Mr. Hilton) Referring to another exhibit,  
 [19] let's pull Rafferty's — let's pull TX-1, which has  
 [20] already been entered, fortunately. Can you find TX-1?

[21] A: I think so.

[22] Q: Is it this guy? No. There you go.

[23] A: TX-1.

[24] Q: It is the Inner-Tite patent, if that helps.

[25] A: Okay. I have it.

1—11:00

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[1] Q: Okay. Could you turn, please, to the third  
 [2] drawing page, which is called Sheet 3 of 3. It has  
 [3] Inner-Tite No. 00146 on it.

[4] Yeah, that's —

[5] MR. MIMS: You're referring to the Bates  
 [6] number on the bottom?

[7] MR. HILTON: Yes, I am.

[8] Q: (By Mr. Hilton) That's the page, yes.

[9] A: Okay. Figure 3? Okay.

[10] Q: It's my understanding that the pictures that  
 [11] were — that color was added to were taken from this  
 [12] page. Do you see Element 28 which, I believe, is a  
 [13] bracket on this page?

[14] A: I do.

[15] Q: Do you have an understanding of how the jaw,  
 [16] which is what it's called in this patent and marked  
 [17] Item 38, attaches to the bracket?

[18] A: I do.

[19] Q: How does it attach to the bracket?

[20] MR. MIMS: And you're asking him based on  
 [21] the patent or based on the product?

[22] MR. HILTON: Based on the patent.

[23] MR. MIMS: Okay. Do you understand the  
 [24] question?

[25] A: Based on the patent, I haven't had time to read

1—11:01

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[1] the —

[2] Q: (By Mr. Hilton) Oh, I see.

[3] A: — patent fully. I don't know how else to call  
 [4] that.

[5] MR. MIMS: I just want to make sure the  
 [6] record's clear what you're asking him.

[7] MR. HILTON: Okay. That's — that's fair.

[8] We can ref- — the product's been entered. Sure.

[9] MR. MIMS: I was just going to —

[10] MR. HILTON: TX — yeah. TX-8-B. Is that  
 [11] what that is, 8-B, or 86?

[12] MR. MIMS: Eighty-six.

[13] MR. HILTON: Eighty-six. Sorry.

[14] Q: (By Mr. Mims) This is a sample of the  
 [15] Inner-Tite product. And my question is: Do you have an  
 [16] understanding of how the bracket of the Inner-Tite  
 [17] product is attached to the jaw or clamping member which  
 [18] is this portion here that contacts the inside of the  
 [19] wall? Do you — do you have an understanding of how  
 [20] they're attached?

[21] A: I do.

[22] Q: What is that understanding?

[23] A: That they are attached with these tabs right  
 [24] here on the sides.

[25] Q: I see. And what do the tabs — how do the tabs

1--11:02

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[1] attach to the bracket?  
[2] A: Oh, the tabs — looks like they have a little  
[3] protruding section here on the end of the tab —  
[4] Q: Right.  
[5] A: — that prevent — prevents the — this  
[6] clamping member, if you will, from being removed from  
[7] the — from the bracket.  
[8] MR. MIMS: You were — this is all  
[9] testimony on the jaw? He's testifying —  
[10] MR. HILTON: The jaw and the bracket, how  
[11] they attach to one another.  
[12] MR. MIMS: By tab. So, you mean the jaw?  
[13] THE WITNESS: Yes. The tabs are on this  
[14] member which I —  
[15] Q: (By Mr. Hilton) The tabs are —  
[16] THE WITNESS: — called the jaw.  
[17] Q: (By Mr. Hilton) The tabs are part of a jaw?  
[18] A: Correct.  
[19] MR. MIMS: Thank you.  
[20] Q: (By Mr. Hilton) All right. And do they attach  
[21] to notches on the second flange?  
[22] A: They do.  
[23] Q: All right. And are those notches part of that  
[24] orange space?  
[25] A: Orange —

1--11:03

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[1] Q: The orange space shown in the TX-90 and also  
[2] shown in TX-32.  
[3] MR. MIMS: How can — you're saying the  
[4] not — the — the empty space?  
[5] MR. HILTON: I'd like the witness to  
[6] answer the question.  
[7] Q: (By Mr. Hilton) Are the notches part of the  
[8] orange space?  
[9] A: No, they're not.  
[10] Q: They're not. How are they not part of it?  
[11] Well, are the edges that define the notches part of the  
[12] or — part of the second flange that defines the orange  
[13] space?  
[14] A: Yes, they are.  
[15] Q: Now get to what I wanted to — oh, on — on  
[16] page 8 I read Paragraph 12.  
[17] A: Which diagram are you referring?  
[18] Q: I'm sorry. Page 8 of TX-90. Sorry for the  
[19] jumping around there. I was trying to avoid using an  
[20] exhibit to copy.  
[21] A: That's TX-1.  
[22] Q: So, TX-90 is the —  
[23] A: Okay.  
[24] Q: — third declaration; and on page 8, I read a  
[25] paragraph earlier regarding Drawing 601051, which

1--11:04

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[1] identified two dimensions, 0.385 inches and a 1.040  
[2] inches dimension.  
[3] A: Uh-huh.  
[4] Q: If you like, I can reread the paragraph to you.  
[5] A: Sure.  
[6] Q: Sure. "Referring to Drawing 10 — 601051,  
[7] which is part of Exhibit-8 and is a drawing for the  
[8] bracket used in both ProLock products, the wedge-shaped  
[9] space can be seen by drawing a line from the bottom end  
[10] of first flange of the mounting bracket, which can be  
[11] identified by the 0.385 inches dimension, to the bottom  
[12] end of the second flange, which can be identified by the  
[13] 1.040 inches dimension."  
[14] A: Yes.  
[15] MR. HILTON: I'd like to enter another  
[16] exhibit. Exhibit 91. Is that right?  
[17] THE REPORTER: Yes.  
[18] MR. MIMS: All these sheets are?  
[19] MR. HILTON: Yes.  
[20] (Exhibit TX-91 marked)  
[21] THE WITNESS: I'm sorry. I just want to  
[22] refer back to the document that defines the flanges  
[23] again.  
[24] MR. HILTON: That's fine. Take your time.  
[25] THE WITNESS: Okay.

1--11:06

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[1] MR. HILTON: Keeping the terminology  
[2] straight is not....  
[3] THE WITNESS: Okay. It's on the bottom.  
[4] Q: (By Mr. Hilton) Okay. Now, this — this  
[5] Exhibit TX-91 that's just been marked, it includes six  
[6] pages, if I'm not mistaken. Have you ever seen any of  
[7] these pages before?  
[8] A: I don't recall. I may have.  
[9] Q: Okay. On the third page into the document, if  
[10] you turn to page 3 of this document — that's it.  
[11] A: Uh-huh.  
[12] Q: The Paragraph 12 that I read from the  
[13] declaration referenced Drawing No. 601051.  
[14] A: Uh-huh.  
[15] Q: I believe that this is the drawing that's being  
[16] referenced. Do you have any reason to doubt that?  
[17] A: It looks like it is, yes.  
[18] Q: Can you find on this Drawing 601051 the two  
[19] dimensions referenced in the Paragraph 12 that I just  
[20] read?  
[21] A: Yes. The .385 dimension is right here.  
[22] Q: Okay.  
[23] A: And the —  
[24] Q: Could you — could you circle it on yours?  
[25] Here —

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1—11:07

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[1] A: Sure.

[2] Q: — use this. Sorry. Write, too.

[3] A: (Complies). Okay. And the 1.040 is right

[4] here.

[5] Q: Okay. I even have colors. I have some colored

[6] highlighters; and I want to ask you if you could for me,

[7] please, highlight in first the green the portion of the

[8] bracket in — let's do the central drawing, which is

[9] this one here in the center of the page.

[10] A: Okay.

[11] Q: High — I'm going to ask you to highlight in

[12] green the portion of this bracket that is associated

[13] with this 0.385 dimension. Do you think you can do

[14] that?

[15] A: Yes. (Complies).

[16] Q: And I'm going to ask you to highlight in blue

[17] the portion of the drawing in the center of the page of

[18] the bracket that is associated with the 1.040 dimension.

[19] A: (Complies).

[20] Q: Could you also highlight those same areas on

[21] the drawing of the bracket shown to the right of the

[22] center, this one here (indicates)? Do you think you'd

[23] be able to do that?

[24] A: Uh-huh.

[25] Q: Okay. Could you do that, please?

1—11:09

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[1] MR. MIMS: Okay. Which drawing from

[2] there? To the right?

[3] MR. HILTON: To the right of the center.

[4] A: Okay. Which areas do you want me to —

[5] Q: (By Mr. Hilton) The same two areas that you've

[6] identified, if you can.

[7] MR. MIMS: Objection, vague.

[8] MR. HILTON: I'm asking —

[9] MR. MIMS: It's a different view.

[10] MR. HILTON: I'm asking if he can.

[11] Q: (By Mr. Hilton) Do you understand this —

[12] MR. MIMS: Well, objection, vague.

[13] Q: (By Mr. Hilton) Do you understand this to be an

[14] engineering drawing that shows a top view above the

[15] center?

[16] A: I do.

[17] Q: And that shows a bottom view below the center?

[18] A: Uh-huh. Yes.

[19] Q: And a left-side view on the left of center?

[20] A: Uh-huh.

[21] Q: And a right-side view on the right of center?

[22] A: I do.

[23] Q: Can you identify portions of the drawings, for

[24] example, on the right-side view that are associated

[25] with....

1—11:10

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[1] A: Which areas —

[2] Q: — the portions of the bracket —

[3] A: — would you like me to define?

[4] Q: Sorry.

[5] A: All the areas, define the....

[6] Q: No. I'm asking if you can — if you can

[7] identify on the drawing on the right the portions of the

[8] bracket that have the dimensions 1.040 and the dimension

[9] 0.385 that you've colored in blue and green. Can you do

[10] that?

[11] MR. MIMS: Objection, vague.

[12] MR. HILTON: It's a yes or no question.

[13] MR. MIMS: Stated my objection.

[14] A: The areas — okay. The areas that it defines,

[15] all the — define which areas — I'm thinking of areas

[16] in volumes and everything.

[17] Q: (By Mr. Hilton) Sure.

[18] A: Define what you're —

[19] Q: I understand — I understand that the drawing

[20] in the center is two dimensional and the drawing to the

[21] right is — is not. It's an isometric view. I'm asking

[22] if you can highlight in green first — can you highlight

[23] in green —

[24] A: Sure.

[25] Q: — the portion of the bracket shown on the

1—11:11

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[1] drawing on the right that has the dimension of 0.385?

[2] A: Yes. Yes, I —

[3] MR. MIMS: The vertical dimension?

[4] MR. HILTON: Right.

[5] A: Yes.

[6] MR. MIMS: Objection, vague.

[7] A: (Complies). Okay.

[8] MR. MIMS: May I see —

[9] Q: (By Mr. Hilton) Can you —

[10] MR. MIMS: — the drawing just so — I

[11] can't see it from here. I just want to see —

[12] MR. HILTON: Sure.

[13] MR. MIMS: — what he marked.

[14] Q: (By Mr. Hilton) Can you highlight for me,

[15] please, in blue the portion of the bracket shown in the

[16] drawing on the right that has the dimension 1.040 that

[17] you highlighted a side view of in the center?

[18] A: Yeah.

[19] MR. MIMS: Objection, vague.

[20] A: (Complies).

[21] Q: (By Mr. Hilton) Okay. Thank you.

[22] A: Uh-huh.

[23] Q: I'd like to move on to the patent, if we can,

[24] which is another exhibit. Let me make sure that I don't

[25] have — oh, let me — oh, actually, one other — one



1—11:13

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[1] other thing. One other thing I want to ask about with  
[2] respect to TX-88. This is the top view of the side wall  
[3] with the first flange being opposed by the side panels.  
[4] A: Uh-huh.  
[5] Q: Is that cor —  
[6] A: That's right.  
[7] Q: If I recall.  
[8] I noticed there's a difference — a  
[9] distance shown between where the first panel would  
[10] end — first — a panel would end and the first flange  
[11] begins. Is there a space between those two on opposite  
[12] sides of the wall?  
[13] I don't know if you understand my  
[14] question.  
[15] MR. MIMS: Objection, vague.  
[16] A: Can you be a little more specific?  
[17] Q: (By Mr. Hilton) Happy — happy to. I  
[18] understand it's your testimony that the side edges —  
[19] the — what do we call this edge? The side edge? Is  
[20] that okay? The edge of the side panel that faces the  
[21] wall, do you want to call that a side edge?  
[22] A: The face of the —  
[23] Q: The face. Okay. The face of the side panel.  
[24] I understand that the faces of the side panel do not  
[25] directly oppose the first flange. Is that correct?

1—11:14

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[1] A: That's correct.  
[2] Q: Do you know how far in this dimension they are  
[3] away from that edge by, or can you determine how far  
[4] they are away from that edge in the drawing that we were  
[5] just looking at, which is page 3 of Exhibit TX-91?  
[6] I'll restate it again if you wish.  
[7] MR. MIMS: Objection, vague.  
[8] A: From — from this drawing here?  
[9] Q: (By Mr. Hilton) Not from that drawing solely.  
[10] From that drawing and the one before it, which is page 2  
[11] of this exhibit. If we turn — let me break it down.  
[12] If we turn to page 2 of this exhibit,  
[13] which is — has the Drawing No. 601049-1 clamping  
[14] member, do you see that?  
[15] A: Uh-huh.  
[16] Q: Do you see in the center of the page of page 2  
[17] there is a reference to 1.490?  
[18] A: I see it.  
[19] Q: I believe that's inches. These are all inches.  
[20] A: Uh-huh.  
[21] Q: Is that right?  
[22] A: Correct.  
[23] Q: Do you under —  
[24] MR. MIMS: Which page are you on?  
[25] MR. HILTON: I'm on page 249, 601049-1.

1—11:15

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[1] Q: (By Mr. Hilton) Do you understand that to be  
[2] the inner dimension of the clamping member?  
[3] A: I do.  
[4] Q: If we then turn to page 3 of this exhibit,  
[5] which is 601051, the bracket that we were just looking  
[6] at —  
[7] A: Uh-huh.  
[8] Q: — do you see a dimension that — on the left  
[9] side that is 1.430?  
[10] A: I see it.  
[11] Q: Is that the dimension of this portion of the  
[12] first flange that's shown with the forces B?  
[13] A: Yes, it is.  
[14] Q: So, if we take the difference between 1.490 and  
[15] 1.430, we get 60 thousandths of an inch. Is that right?  
[16] A: That's correct.  
[17] Q: So, is it fair to say that based on these  
[18] drawings, this distance between where the face of the  
[19] side panel ends and the first flange starts, on each  
[20] side is about 3 thousandths of an inch?  
[21] A: Three thousandths?  
[22] Q: Thir- — 30 thousandths of an inch? Is it 30?  
[23] Yes, 30 thousandths of an inch?  
[24] A: Yes.  
[25] Q: Do you know whether or not the DeWalch ProLock

1—11:17

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[1] 1 product, when you were at DeWalch, was intended to be  
[2] designed in accordance with these drawings?  
[3] A: Yes.  
[4] Q: Was it, then, designed in accordance with these  
[5] drawings?  
[6] A: I believe so. I don't have the original  
[7] drawings in front of me, but this — this looks — from  
[8] what I remember, yes.  
[9] Q: These look like the original drawings that you  
[10] recall?  
[11] A: (Witness nods head).  
[12] Q: Do you know whether the — when you were at  
[13] DeWalch, the ProLock 2 products were designed and  
[14] manufactured in accordance with these drawings?  
[15] Take your time. There are drawings in  
[16] here of the bracket for the ProLock 2 product — I mean  
[17] the jaw, the clamping member for the ProLock 2 member.  
[18] Actually, let me scratch — let me stop that.  
[19] Were you at DeWalch when the ProLock 2  
[20] product was designed?  
[21] A: Yes.  
[22] Q: Do you know whether the ProLock 2 product is  
[23] being manufactured?  
[24] A: I don't know since we —  
[25] Q: Do you know whether it was being manufactured

1—11:18

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[1] when you were at DeWalch?

[2] A: It was not being manufactured.

[3] Q: Are you aware of any procedures that were  
[4] developed regarding how it could be manufactured?

[5] A: The ProLock 2?

[6] Q: Right.

[7] A: No, I'm not aware of it.

[8] Q: Was the ProLock 2 product sold, to your  
[9] knowledge, when you were at DeWalch?

[10] A: No.

[11] Q: Now, ready to move on to the exhibit — what  
[12] did I mark it as? This is John's patent, TX-A. I think  
[13] it's this (indicates).

[14] Do you recognize this document? You might  
[15] not recognize the first page; but if you turn past the  
[16] first page, do you recognize this document?

[17] A: I do.

[18] Q: Do you recall when you first saw this document?

[19] A: I don't recall when I first saw it.

[20] Q: Were you involved in the preparation of the  
[21] patent application that was filed and eventually issued  
[22] as this patent?

[23] A: I looked over — I read the first draft, what I  
[24] remember.

[25] Q: Let me introduce — actually, I don't need to.

1—11:21

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[1] You guys already have — TX-B. TX-B — we can find that  
[2] easily — is this (indicates).

[3] A: Okay.

[4] Q: If we turn to the third page of this document,  
[5] it begins a....

[6] MR. MIMS: What Bates number are you  
[7] looking at?

[8] MR. HILTON: DEW0036.

[9] MR. MIMS: Okay. Thank you.

[10] Q: (By Mr. Hilton) And then I'll state DEW0036  
[11] through 0061, all this, appears to be the patent  
[12] application that was filed in connection with this  
[13] patent.

[14] A: Okay.

[15] Q: Take your time. Do you — do you recognize  
[16] these pages? It's not terribly — the text isn't  
[17] terribly long, and that's what I'm want —

[18] MR. MIMS: Do you want him to read this  
[19] and make —

[20] MR. HILTON: I don't need him to read it.  
[21] I just — I'm asking if he's familiar with it.

[22] A: Vaguely.

[23] MR. HILTON: Okay. This might be a good  
[24] time to stop. He needs to break the video, and might be  
[25] a good time to stop.

1—11:21

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[1] THE VIDEOGRAPHER: 11:21, we're off  
[2] record.

[3] (Recess taken)

[4] THE VIDEOGRAPHER: This is Videotape No. 2  
[5] in the deposition of John Stachowiak. The time is  
[6] 11:30. We're back on record.

[7] Q: (By Mr. Hilton) Mr. Stachowiak, I believe you  
[8] testified this morning that the forces applied by the  
[9] ProLock 1 product — we'll reference that first — on  
[10] the wall of the meter box result in some movement of the  
[11] metal wall. Did you testify as to that?

[12] A: Yes.

[13] Q: How do you know that?

[14] A: Well, that's what the design was intended; and  
[15] through calculation and visual inspection, like I say, I  
[16] could actually see some deflection of that wall when the  
[17] ProLock was placed on the box.

[18] Q: And I believe you testified that you tried to  
[19] measure that deflection?

[20] A: I tried to get an exact measurement. I can't  
[21] recall if it was successful.

[22] Q: Exhibit TX-B, which is in front of you, is, as  
[23] we've mentioned, a copy of the patent application that  
[24] was filed and eventually result — and the whole file  
[25] history that resulted in the patent in your name, United

1—11:32

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[1] States Patent 7176376. Beginning on page 3 is a copy of  
[2] the patent application that was filed.

[3] Now, I believe you just testified that the  
[4] design was intended to have — well, the design was  
[5] intended to result in — in what, actually? I don't  
[6] want to put words in your mouth. You just said the  
[7] design was intended to result in bending of the wall not  
[8] being straight — is that right — when the product is  
[9] attached?

[10] A: When the product was attached, that's right.

[11] Q: Do you know whether that feature of the product  
[12] is discussed at all in the patent application?

[13] A: I don't recall.

[14] Q: Beginning on page DEW0084, which is a Bates  
[15] stamp number on the bottom — it's probably about  
[16] halfway through this. This is a portion of an office  
[17] action that issued from the patent office in connection  
[18] with this patent application, is my understanding.

[19] Do you recognize this document?

[20] A: I — I don't remember if I've seen it before.  
[21] I don't recognize it.

[22] Q: From the page before, it appears that it was  
[23] mailed on or about March of '05, from the bottom right  
[24] in a handwritten note by the examiner.

[25] A: Okay.

1—11:35

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[1] Q: There's no mailing date on this document.  
[2] A: Okay.  
[3] Q: And I understand you left in about the summer  
[4] of 2006.  
[5] In 2005, would you have reviewed an office  
[6] action in a pending patent application where you're the  
[7] named inventor?  
[8] MR. MIMS: Objection, foundation, vague.  
[9] A: Can you be more specific with your question?  
[10] Q: (By Mr. Hilton) Do you recall ever reviewing  
[11] any office action from the patent office in connection  
[12] with the patent application that resulted as —  
[13] A: I don't recall.  
[14] Q: You don't recall?  
[15] A: I don't recall.  
[16] Q: Do you recall reviewing any amendments that  
[17] were filed by the applicant, DeWalch, in connection with  
[18] this patent application?  
[19] A: No, I don't recall.  
[20] Q: Do you recall participating in any way in the  
[21] preparation of amendments or responses to the patent  
[22] office?  
[23] A: I — I don't recall what — what involvement I  
[24] had. There was a — so many things that was going on, I  
[25] don't recall.

1—11:36

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[1] Q: Sure. The patent in your name, T —  
[2] Exhibit TX-A, appears to have issued in February of this  
[3] year; and I believe you testified that you don't recall  
[4] when you first saw it.  
[5] A: TX-A?  
[6] Q: That's the patent.  
[7] A: Is it this one here?  
[8] Q: Yes.  
[9] A: Okay.  
[10] Q: Have you looked at the claims of this patent?  
[11] A: I looked at them, yes.  
[12] Q: Do you have any understanding as to what's  
[13] covered by this patent?  
[14] MR. MIMS: Objection, vague, calls for a  
[15] legal conclusion.  
[16] Q: (By Mr. Hilton) Yes or no.  
[17] A: Some understanding, not fully understanding —  
[18] not full understanding.  
[19] Q: What is your understanding?  
[20] A: Can you be more specific?  
[21] Q: Well, you said you had some understanding of  
[22] what is covered by Claim 1 of this patent. Maybe we  
[23] should turn to it, and I want to understand what you do  
[24] understand.  
[25] MR. MIMS: Objection, mischaracterizes his

1—11:38

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[1] testimony.  
[2] A: As far as the claims?  
[3] MR. MIMS: Claim 1 of this —  
[4] A: I don't have any understanding.  
[5] Q: (By Mr. Hilton) You don't have any  
[6] understanding of what's covered by this claim?  
[7] A: These — I didn't have enough time to review  
[8] this. I'm not an expert in patent jargon. I don't have  
[9] full understanding of this, no.  
[10] MR. MIMS: Do you want him to read it, the  
[11] patent? Is that what you're saying?  
[12] MR. HILTON: Would that help? I mean, if  
[13] he's going to come to the same place after reading  
[14] it....  
[15] MR. MIMS: Yeah, but he's not an ex —  
[16] he's not a patent lawyer.  
[17] Q: (By Mr. Hilton) Did you read the patent  
[18] application prior to it being filed?  
[19] A: I did.  
[20] MR. HILTON: Well, it's not long. If he  
[21] could look at the text of it.  
[22] MR. MIMS: You want him to read this  
[23] patent, all eight columns, and read the drawings?  
[24] MR. HILTON: Well, I'm most interested in  
[25] the detailed description, which is a page and a half.

1—11:39

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[1] MR. MIMS: All I'm saying, counsel, this  
[2] is not a case about what these claims mean; and we  
[3] haven't had them construed. I just — it's your — your  
[4] questions. I just — you know, he's not a patent  
[5] lawyer. I don't know what relevance it has to what the  
[6] claims mean.  
[7] Q: (By Mr. Hilton) Well, do you have any  
[8] understanding of what's covered by any of the claims in  
[9] this patent?  
[10] MR. MIMS: Are you asking him without  
[11] reading the patent in detail?  
[12] MR. HILTON: Yeah, just — he said he has  
[13] a general understanding.  
[14] Q: (By Mr. Hilton) So, do — do you have —  
[15] A: I have some understanding of portions of it.  
[16] Q: What is — what is that some understanding?  
[17] A: Okay. I understand what the clamp actuating  
[18] member is.  
[19] Q: Okay. What — what is that if we look at the  
[20] drawings....  
[21] MR. MIMS: If you want to review the  
[22] patent —  
[23] Q: (By Mr. Hilton) — as an example?  
[24] MR. MIMS: — make sure you understand —  
[25] want to make sure he understands what the drawings mean.



1—11:40

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[1] MR. HILTON: Actually, what I'd like —  
 [2] I'm not interested in — in his testimony regarding the  
 [3] scope and content of any claim language, any claim  
 [4] warrant.  
 [5] What I'm actually trying to identify is  
 [6] what examples are shown in the application that he  
 [7] participated in drafting —  
 [8] MR. MIMS: Uh-huh.  
 [9] MR. HILTON: — of what's claimed. And an  
 [10] example of what's in Claim 1 is not a legal conclusion  
 [11] regarding the scope. It's an example.  
 [12] MR. MIMS: It is, because he has to read  
 [13] the claim to understand what the — what embodiment it  
 [14] covers. You're asking him to read the patent and  
 [15] construe the claims, counsel.  
 [16] If you want to talk to him about the  
 [17] drawings, I just — I think the witness ought to have a  
 [18] chance to read what you're asking him about because he  
 [19] hasn't studied this patent in — I mean, since he filed  
 [20] the application.  
 [21] I just think it's, you know — it's not  
 [22] what we're here about. We're here about the Rafferty  
 [23] patent. But maybe you can focus on —  
 [24] Q: (By Mr. Hilton) Do you — do you have any  
 [25] understanding as to whether this — this patent covers

1—11:41

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[1] any products of DeWalch's?  
 [2] A: Yes, it covers the ProLock.  
 [3] Q: What's the basis for that understanding?  
 [4] A: Because on the title, "An Apparatus and Method  
 [5] for Securing," and there's a picture of it right there.  
 [6] MR. MIMS: Counsel, I think you're going  
 [7] to get a layperson's bird's-eye view of this.  
 [8] MR. HILTON: He's an inventor of this, and  
 [9] I'd like to understand what's disclosed.  
 [10] Q: (By Mr. Hilton) If we look at the first — the  
 [11] second page of drawings, which is Sheet 2 of 5 —  
 [12] A: Uh-huh. This one here?  
 [13] Q: Yes. Yes.  
 [14] A: Okay. 2 of 5, yes.  
 [15] Q: Right. That's what it says on top.  
 [16] The text of this patent references an  
 [17] element called clamping member 150 on column — and  
 [18] I'm — I'm going to ask if you can find in the drawing  
 [19] on Column 4 at about line 40 —  
 [20] A: On which — which page is this?  
 [21] Q: Column 4 is on — I don't know. They go by  
 [22] columns. It's a United States Patent Office tradition.  
 [23] So, that's Columns 1 and 2 and 3 and 4.  
 [24] So, Column 4, in the middle there are  
 [25] numbers running every five — 5, 10, 15, et cetera. At

1—11:43

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[1] about col- — at about line 43 of Column 4 it references  
 [2] a clamp actuating member.  
 [3] A: Okay.  
 [4] Q: And I'm asking if you can identify that in  
 [5] Figure 4-A?  
 [6] A: Clamp actuating member —  
 [7] Q: Right.  
 [8] A: — in 4-A. Yes.  
 [9] Q: And the patent also references a term called  
 [10] clamp 90 which appears a little below that in Column 4  
 [11] at line 51, clamp 1 — 190. Sorry.  
 [12] A: Clamp 190.  
 [13] Q: Right. Do you —  
 [14] A: Yes, I see that.  
 [15] Q: — see that?  
 [16] A: See that, yes.  
 [17] Q: That's what I think we've been calling the  
 [18] clamping member. I'm not sure. I'm trying to get my  
 [19] terminology straight, and that's what I want to  
 [20] identify.  
 [21] MR. MIMS: Objection, vague.  
 [22] Q: (By Mr. Hilton) The patent also references  
 [23] something called clamping member 70 at the top of  
 [24] Column 4 in the second line. Can you find —  
 [25] A: Yes, I find 70.

1—11:44

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[1] Q: You find 70?  
 [2] In Column 4 starting at line 41, there's a  
 [3] sentence that reads: In a specific nonlimiting  
 [4] embodiment, clamping member 70 is a bracket further  
 [5] comprising a fastening shelf having an aperture 130  
 [6] disposed at one end and a clamp actuating member 150 at  
 [7] the other end.  
 [8] Do you see that sentence?  
 [9] A: I see it.  
 [10] Q: And take your time. My question is: In this  
 [11] disclosure, is the clamping member 70 just the bracket,  
 [12] just the — the unitary piece that may be a bracket, or  
 [13] does it — is it the whole product?  
 [14] MR. MIMS: Objection, foundation, document  
 [15] speaks for itself.  
 [16] Take time to read the document.  
 [17] I think this line of questioning is so  
 [18] unfair without him reading this document.  
 [19] You're going to want to understand this.  
 [20] MR. HILTON: I said take your time. The  
 [21] detailed description runs for three columns, and I'm  
 [22] actually — actually really only interested in Column 4  
 [23] through the first paragraph of Column 5.  
 [24] MR. MIMS: Why don't we go off the record  
 [25] and let him read the record, if you're going to ask him

1—11:45

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[1] the detail, because I don't — him sitting here running  
[2] tape —  
[3] MR. HILTON: With it running, I agree.  
[4] That's fine. That's fine.  
[5] THE VIDEOGRAPHER: 11:45, we're off  
[6] record.  
[7] (Brief recess)  
[8] THE VIDEOGRAPHER: 11:50, we're back on  
[9] record.  
[10] Q: (By Mr. Hilton) Mr. Stachowiak, it's my  
[11] understanding that you haven't reviewed either Exhibit  
[12] TX-A or TX-B since you left DeWalch. Is that correct?  
[13] A: I reviewed it but not to — to a point where I  
[14] fully understand the full scope of the patent.  
[15] Q: Did you review it in preparation for today's  
[16] deposition?  
[17] A: I — I looked over it, yes, for today's  
[18] deposition.  
[19] Q: Sitting here today, are you able to identify  
[20] for me what is meant by certain terms in the text of the  
[21] patent, such as clamp actuating member?  
[22] A: Clamp actuating member? Yes, I understand what  
[23] the clamp actuating member is.  
[24] Q: Can you show me where it is?  
[25] A: Clamp actuating member is 150.

1—11:52

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[1] MR. MIMS: What figure?  
[2] THE WITNESS: 4-A.  
[3] Q: (By Mr. Hilton) Are you able to identify for me  
[4] what is the clamping member 70?  
[5] MR. MIMS: You mean what is encompassed by  
[6] it?  
[7] MR. HILTON: No.  
[8] Q: (By Mr. Hilton) What's the example shown in the  
[9] patent?  
[10] A: It looks like — in my opinion, it looks like  
[11] the clamping member is the entire device, the first —  
[12] it was 70, is the entire device.  
[13] Q: By "entire device," can you circle it on  
[14] Figure 4-A of your copy?  
[15] MR. MIMS: Counsel, maybe this makes it  
[16] simple. Claim 1 claims a clamping member and a lock  
[17] housing. So, I think he's right, just to make this  
[18] simple.  
[19] MR. HILTON: That's fine.  
[20] MR. MIMS: But you and I know that as  
[21] patent lawyers.  
[22] MR. HILTON: I'm not asking him about  
[23] Claim 1.  
[24] A: Okay. What do you want me to do?  
[25] Q: (By Mr. Hilton) Can you circle the clamping

1—11:54

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[1] member 70, what is meant by that term to your  
[2] understanding?  
[3] MR. MIMS: I'm going to object to this  
[4] question as calling for a legal conclusion and vague.  
[5] You may answer, if you can.  
[6] A: Okay. It looks like the clamping member is —  
[7] in my opinion is this guy here. Okay.  
[8] MR. MIMS: Which guy are you referring to?  
[9] THE WITNESS: This (indicates).  
[10] MR. MIMS: The entire thing?  
[11] THE WITNESS: The entire thing.  
[12] MR. MIMS: Right. Okay.  
[13] Q: (By Mr. Hilton) In Column 4 on line — the  
[14] sentence in lines — call it 44 to 45 — sometimes the  
[15] line numbers end up in the middle — there's a sentence  
[16] that reads, "A plurality of engagement members 180, 210  
[17] are disposed on a body portion of the clamping member  
[18] 70."  
[19] Do you have any understanding of what is  
[20] meant by the term "body portion"?  
[21] MR. MIMS: Are you referring to 180 or 210  
[22] or both?  
[23] MR. HILTON: I'm referring to the term  
[24] "body portion."  
[25] A: I'm assuming that the body portion is this main

1—11:57

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[1] bracket as we discussed earlier.  
[2] Q: (By Mr. Hilton) Okay. Above that I'd read a  
[3] sentence earlier starting about line 41 that reads, "In  
[4] a specific, nonlimiting embodiment, clamping member 70  
[5] is a bracket"; and it goes on.  
[6] A: Uh-huh.  
[7] MR. MIMS: Further comprising, you mean?  
[8] Q: (By Mr. Hilton) "Further comprising a fastening  
[9] shelf 110, having an aperture 130 disposed at one end  
[10] and a clamping member 150 at the other end."  
[11] My question is: Does it make sense to you  
[12] that a clamping member 70 could be a bracket in any —  
[13] in an embodiment?  
[14] MR. MIMS: Objection, misstates the record  
[15] of the patent.  
[16] A: Can you repeat your question again, please?  
[17] Q: (By Mr. Hilton) Do you have any understanding  
[18] as to how in an embodiment a clamping member could be a  
[19] bracket?  
[20] MR. MIMS: Same objection.  
[21] A: I could see how a device — somebody would call  
[22] this a bracket.  
[23] Q: (By Mr. Hilton) A multi-component part?  
[24] A: Possibly.  
[25] Q: Okay. Do I understand that you did not write

1—11:59

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[1] this patent application?

[2] A: That's right.

[3] Q: Do you have any understanding in the context of  
[4] this patent application what is meant — in the context  
[5] of this patent what is meant by a term "surrounding  
[6] member"?

[7] MR. MIMS: Objection, vague, calls for a  
[8] legal conclusion.

[9] A: I'm sorry? What — be more specific on what  
[10] you....

[11] Q: (By Mr. Hilton) Do you have any understanding  
[12] what is meant by the term "surrounding member"? Here,  
[13] I'll direct you to —

[14] A: Yeah, if you could show me what you're talking  
[15] about.

[16] Q: Yeah. Let's — in the file history, let's turn  
[17] to page that is marked DEW0118.

[18] MR. MIMS: Do you mean 116?

[19] MR. HILTON: 118 is actually what I'm  
[20] looking at.

[21] A: Okay.

[22] Q: (By Mr. Hilton) It starts "Amendments to the  
[23] Claims" on top. Have you seen this document before?

[24] MR. MIMS: Objection, foundation.

[25] A: I don't recall.

1—12:00

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[1] Q: (By Mr. Hilton) You don't recall?

[2] A: Yeah.

[3] Q: When claims are amended, text being removed is  
[4] typically stricken with a strike-through and underlined  
[5] text is typically being added.

[6] A: Okay.

[7] Q: And I just wanted to find out if you have any  
[8] understanding of — of what's meant.

[9] MR. MIMS: Objection, foundation.

[10] Q: (By Mr. Hilton) The paragraph in the middle of  
[11] Claim 1 reads: A clamping — a clamping member wherein  
[12] a clamping member further comprises a body portion, a  
[13] clamp comprising a surrounding member which surrounds at  
[14] least a part of said body portion, wherein said  
[15] surrounding member comprises at least one engagement  
[16] surface, a clamp actuating member, and a fastening shelf  
[17] having a first security means.

[18] Do you have any understanding of what is  
[19] meant by the term "surrounding member" in this context?

[20] MR. MIMS: Objection.

[21] A: I think I do.

[22] MR. MIMS: Objection, vague and  
[23] foundation.

[24] MR. HILTON: He has an understanding.

[25] Q: (By Mr. Hilton) What is your understanding?

1—12:01

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[1] A: My opinion is that the surrounding member is  
[2] the side walls of the — there he's referring to these,  
[3] okay, this member here (indicates).

[4] Q: (By Mr. Hilton) Not the lower portion, just the  
[5] side? Is that right?

[6] MR. MIMS: I'm going to object to the  
[7] question as calling for a legal conclusion, foundation,  
[8] and vague.

[9] A: Please ask your question again.

[10] Q: (By Mr. Hilton) My question was: Does your  
[11] understanding of "surrounding member" which — is that  
[12] it refers to the side panels, exclude the lower portion  
[13] of that —

[14] A: No, that's not — that's not clear to me here.

[15] Q: Okay.

[16] MR. MIMS: By the way, same objections.

[17] Q: (By Mr. Hilton) If we look at the patent again  
[18] at the bottom of Column 4 —

[19] A: Which — which document are we on now?

[20] Q: Sorry.

[21] A: Are we on A again?

[22] Q: Yes, we're on A.

[23] A: Okay.

[24] Q: At the bottom of Column 4 starting at line 64,  
[25] there's a paragraph and I'm going to read it and if —

1—12:03

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[1] it will be referencing Figure 4-B, I think, and 4-A.

[2] MR. MIMS: 4-A, yeah.

[3] Q: (By Mr. Hilton) Referring again to Figure 4-A:  
[4] When clamp actuating member 150 is rotated about  
[5] actuate — actuat-able member 180, arc surface 170  
[6] contacts clamp 190 and through a cam-type action  
[7] sandwiches one or both of the clamp engagement surfaces  
[8] 200, 215 between the clamp actuating member 150 and a  
[9] wall portion 140, thereby creating a constant engagement  
[10] surface along the interface between wall portion 140 and  
[11] engagement surface 200.

[12] A lot of reference numerals in there. I  
[13] apologize.

[14] Do you see in Figure 4-A what are called  
[15] here clamp engagement surfaces 200 and 215?

[16] MR. MIMS: Objection, vague.

[17] A: I see 200 and 215, yes.

[18] Q: (By Mr. Hilton) Do you know whether this patent  
[19] discloses — whether sandwiching either the clamp  
[20] engagement surface 200 or the clamp engagement surface  
[21] 215 or both is most desired?

[22] MR. MIMS: Objection, vague.

[23] A: Sorry. Repeat your question again.

[24] Q: (By Mr. Hilton) Do you know whether this patent  
[25] discloses that clamp — that engaging the clamp

1—12:05

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[1] engagement surface 200 —  
[2] A: Uh-huh.  
[3] Q: — is most preferred or engaging clamp  
[4] engagement surface 215 is most preferred or both is most  
[5] preferred?  
[6] MR. MIMS: Objection, document speaks for  
[7] itself, calls for speculation.  
[8] Q: (By Mr. Hilton) I'm just asking if you know.  
[9] A: I don't recall. I don't.  
[10] Q: I believe you testified that your understanding  
[11] of surrounding member is these side panels of this  
[12] product that I'm holding, the Jiffy Lock — I mean, the  
[13] ProLock product.  
[14] A: Correct.  
[15] Q: Why do you think those — what's the basis for  
[16] your understanding of that? Why do you think those are  
[17] surrounding member?  
[18] MR. MIMS: Objection —  
[19] Q: (By Mr. Hilton) I'm trying to get to your  
[20] understanding of what that term — your understanding of  
[21] what that term means in the context of your application.  
[22] A: Well, my understanding is that — is this is  
[23] called the body portion here, that this — these  
[24] surround the portion of the body portion or the body  
[25] member.

1—12:07

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[1] Q: If a portion of the side wall were directly  
[2] opposing the first flange, would it still be a  
[3] surrounding member?  
[4] A: I'm sorry. State that again.  
[5] MR. MIMS: Objection, vague and it calls  
[6] for a legal conclusion.  
[7] Counsel, so it's clear on the record,  
[8] you're not asking him to construe the claims?  
[9] MR. HILTON: No, I'm not. I'm trying to  
[10] avoid that.  
[11] MR. MIMS: But you — you're using the  
[12] term that's in the claim that, for the record, asking  
[13] him to —  
[14] MR. HILTON: It's in the file history,  
[15] too, but, yes. Yeah.  
[16] MR. MIMS: You're asking him his layman's  
[17] interpretation of the term "surrounding," as the  
[18] inventor?  
[19] MR. HILTON: I think he gave me that.  
[20] MR. MIMS: Okay. I just want to make sure  
[21] we're on —  
[22] MR. HILTON: Yeah.  
[23] MR. MIMS: — we follow up what we're  
[24] covering.  
[25] MR. HILTON: Right.

1—12:08

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[1] Q: (By Mr. Hilton) Do you have an understanding of  
[2] how the bracket for the ProLock 1 product is made, which  
[3] is the piece in the middle, how it was made — how it  
[4] was made when you were at DeWalch?  
[5] A: You mean manufactured?  
[6] Q: Right.  
[7] A: Yes.  
[8] Q: Can you describe for me how it's manufactured?  
[9] A: Uh-huh. There is a progressive die that takes  
[10] a piece of raw material, feeds it through — well,  
[11] there's a feeder. It feeds it through the die, and the  
[12] die has a number of stations to perform multiple  
[13] operations to form and cut off the final bracket, its  
[14] raw form.  
[15] Q: So, the raw material is a sheet of metal?  
[16] A: Yes.  
[17] Q: Wider than this, I presume? Wider than the  
[18] bracket is in any dimension long?  
[19] A: Yes, I believe it is.  
[20] Q: And it's flat?  
[21] A: It's flat, yes.  
[22] Q: What is the first operation that occurs? Is it  
[23] stamped?  
[24] A: I don't recall. I can't remember what the  
[25] first operation is.

1—12:10

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[1] Q: What are the various operations that occur,  
[2] such as stamping, bending, cutting? I don't know.  
[3] A: Well, the first operation from my — from what  
[4] I remember, which is vague, it's stamped and then  
[5] there's a bend that's created and then a second bend to  
[6] create the three faces, as you will.  
[7] Q: And that — does that result in the finished  
[8] product — I mean, the finished — the finished bracket?  
[9] A: No.  
[10] Q: What else is done to the piece?  
[11] A: There is a de-burr operation and a heat —  
[12] heat-treat operation and a plating operation.  
[13] Q: So, as I understand, the elements — and I'm  
[14] pointing now to the portion of this first flange that  
[15] extends through this hole — that wasn't — that's not  
[16] add, this portion that extends through? That was part  
[17] of the original piece that was stamped out. Is that  
[18] right?  
[19] A: Are we talking about the — this portion here?  
[20] Q: No. I'm talking about the portion of this  
[21] first flange — the second flange that it passes through  
[22] that opening here —  
[23] A: Yes.  
[24] Q: — passes through that hole?  
[25] A: Yes.



1—12:11

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- [1] Q: That's part of the original piece that was die  
 [2] cut. Right?  
 [3] A: That's correct.  
 [4] Q: It wasn't added on. Okay.  
 [5] I mean, if we u — and if we use the  
 [6] terminology of third flange, first flange, intermediate  
 [7] web, and second flange, this portion that passes through  
 [8] that hole is part of the first flange. Is that — the  
 [9] second — the first flange. Is that right?  
 [10] MR. MIMS: Objection, vague.  
 [11] A: This tab that sticks out is —  
 [12] Q: (By Mr. Hilton) Correct.  
 [13] A: — part of which — your question is a part of  
 [14] which flange?  
 [15] Q: Which — which of these parts —  
 [16] A: It would be part of the second flange.  
 [17] Q: Right.  
 [18] A: It's connected to the second flange.  
 [19] MR. HILTON: Okay. I have no further  
 [20] questions.  
 [21] MR. MIMS: All right. We have some  
 [22] questions.

## FURTHER EXAMINATION

BY MR. MIMS:

- [23] Q: First, earlier you testified regarding the

1—12:12

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- [1] drawings involving forces with the — in TX-20. Do you  
 [2] recall your testimony on that?  
 [3] A: I do.  
 [4] Q: And the — just so it's clear on the record,  
 [5] when you read the declaration of Mr. DeWalch, did you  
 [6] see anything about him describing his indication of  
 [7] arrows to be the kind of drawing that you did as TX-88,  
 [8] which I believe you called a — a drawing of — of the  
 [9] forces?  
 [10] A: Can you — I'm sorry.  
 [11] Q: Yeah. In other words —  
 [12] A: Can you rephrase your question?  
 [13] Q: — Mr. DeWalch did not say in the declaration  
 [14] that was read to you by Mr. Hilton that he was  
 [15] attempting to identify the full width of the forces on  
 [16] the flange outside the box?  
 [17] A: That's right.  
 [18] MR. HILTON: Objection. He doesn't know  
 [19] what he was intending.  
 [20] Q: (By Mr. Mims) And, so, you described it as a  
 [21] generic sort of force?  
 [22] A: That's correct.  
 [23] Q: What do you mean by that?  
 [24] A: Well, a generic force meaning it's — to me,  
 [25] it's showing the basic movement of those — of those

1—12:14

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- [1] members, the basic — basic forces, the direction of the  
 [2] forces, not the actual force diagram.  
 [3] Q: All right. Next point I wanted to cover with  
 [4] you is there was a fair amount of discussion with  
 [5] Mr. Hilton about what he called sheer and bending  
 [6] forces. Do you remember that?  
 [7] A: I do.  
 [8] Q: And the deflection of the wall?  
 [9] A: Yes.  
 [10] Q: I was wondering if you could take this ProLock  
 [11] 1, and I've inserted between it two pieces of metal.  
 [12] A: Uh-huh.  
 [13] Q: If you could lock it into place and demonstrate  
 [14] for the camera the deflection of those two pieces of  
 [15] metal when you've tightened it all the way. Can you do  
 [16] that, as if it were a wall, and tell me if you see any  
 [17] deflection?  
 [18] A: Is this the same thickness of the wall? Is  
 [19] this representative of a wall of a meter box?  
 [20] Q: Well, my question is, first, do you see any  
 [21] deflection with the metal when you tighten that in  
 [22] between where the wall would be?  
 [23] MR. HILTON: Objection.  
 [24] A: No, I don't.  
 [25] Q: (By Mr. Mims) Okay. Well, let me show you.

1—12:15

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- [1] Let me put it in between and see if you can — if you —  
 [2] here. It's snapped into place.  
 [3] Do you see any deflection — and if you  
 [4] look at that straight ahead in the — in the wall — let  
 [5] me just point it out. If you were to hold this here,  
 [6] there's a bend in here rather than being straight?  
 [7] A: There is a bend.  
 [8] MR. HILTON: Objection.  
 [9] A: I see that.  
 [10] Q: (By Mr. Mims) Now, is that the kind of  
 [11] deflection you were describing of a metal that would be  
 [12] caught between these forces?  
 [13] A: A similar deflection, yes.  
 [14] Q: All right. Now, as you noted, those two rulers  
 [15] are thinner in — thinner metal, obviously, than a  
 [16] utility wall. Correct?  
 [17] A: That's right.  
 [18] Q: But the forces would act the same way or apply  
 [19] the same sort of way to deflect the metal wall, just in  
 [20] a lesser quantity?  
 [21] MR. HILTON: Objection.  
 [22] A: No, because the thickness of the wall — a  
 [23] thickness of the wall has everything to do with the  
 [24] function and the deflection that the ProLock has  
 [25] provided.



1—12:16 Page 112

[1] Q: (By Mr. Mims) Can you explain what you mean by  
[2] that?  
[3] A: Yes.  
[4] Q: The deflection?  
[5] A: There is — the device is designed to deflect  
[6] to operate on a certain thickness of a — of a box. It  
[7] needs to be — the thickness needs to remain somewhat  
[8] constant in order to provide the correct clamping force.  
[9] If something that is too thin is inserted  
[10] between — or in that region, it will not — it will not  
[11] apply forces, if any. It just —  
[12] Q: It won't clamp correctly?  
[13] A: It will not clamp correctly; that's right.  
[14] Q: So, for example, those two pieces of metal slip  
[15] through too easily, they're not tight enough?  
[16] A: That's correct.  
[17] Q: All right. And, so, you designed the  
[18] clearances between the — the upper faces of the  
[19] clamping member and the first flange so the clearance  
[20] matches the metal thickness of the wall?  
[21] A: Well, the clearance doesn't match. It's  
[22] slightly —  
[23] Q: It's tighter?  
[24] A: Well, the clearance is slightly less than the  
[25] wall is wide —

1—12:17 Page 113

[1] Q: Right.  
[2] A: — or thick.  
[3] Q: Now, let me find the drawing. Do you have the  
[4] drawing from the — can you find this drawing again  
[5] that's the — from — the figure from the patent in  
[6] suit?  
[7] THE WITNESS: Can you guys help me out?  
[8] Which —  
[9] MR. HILTON: Yes.  
[10] THE WITNESS: Which number?  
[11] MR. MIMS: Okay. Show him the color  
[12] drawing which we were talk — when you examined him.  
[13] Try back in that stack there, I believe, the bottom.  
[14] Here it is.  
[15] Q: (By Mr. Mims) I'm going to hand you what's been  
[16] marked as TX-32. Now, earlier you testified to the  
[17] manufacturing of the — of the bracket. Do you recall  
[18] that testimony?  
[19] A: Yes.  
[20] Q: Do you see at the top there's something called  
[21] web 34?  
[22] A: Yes.  
[23] Q: Is that the same piece of metal that forms the  
[24] first and second flange when you manufacture that piece?  
[25] A: When I manufacture this piece that I'm looking

1—12:19 Page 114

[1] at?  
[2] Q: When you manufacture the piece of metal that  
[3] has the first and the second flange —  
[4] A: Okay. This piece that I'm looking at —  
[5] MR. HILTON: Objection, foundation.  
[6] Q: (By Mr. Mims) Okay. Do you recall the  
[7] testimony where you discussed with Mr. Hilton the  
[8] manufacture of the bracket?  
[9] A: The DeWalch bracket, correct.  
[10] Q: Yes, sir. Do you recall that?  
[11] A: I do.  
[12] Q: And do you recall describing to him how you  
[13] took a piece of metal and you — and you pressed it and  
[14] you shaped it —  
[15] A: Yes.  
[16] Q: — to match this piece? Do you recall that  
[17] testimony?  
[18] A: To match this piece?  
[19] MR. HILTON: Objection.  
[20] Q: (By Mr. Mims) No.  
[21] A: That doesn't match this piece.  
[22] Q: To match the piece that's shown on TX-29 in the  
[23] middle.  
[24] A: Yes, I do.  
[25] Q: All right. Do you recall that you testified

1—12:19 Page 115

[1] that the tabs or the pins on the outside of that first  
[2] flange were part of the same piece of metal?  
[3] A: Well, I never said that the tabs are on the  
[4] first flange. I said they're on the second flange.  
[5] Q: Okay. Correct. In the second flange. I  
[6] misspoke.  
[7] Now, my point is: Is it also correct that  
[8] the web shown in TX-29 — the yellow?  
[9] A: Yes.  
[10] Q: You see the yellow — is also part of the same  
[11] piece of metal that forms the first flange and the  
[12] second flange?  
[13] A: Yes, it is.  
[14] Q: But those parts are named the web rather than  
[15] the flange. Correct?  
[16] A: Yes, they are.  
[17] Q: And they serve a different function than the  
[18] flanges, don't they?  
[19] A: Yes, they do.  
[20] Q: The webs serve to connect the flange 1 to  
[21] flange 2, and flange 2 to flange 3?  
[22] A: That's right.  
[23] Q: Now, the tabs that you put on the second flange  
[24] serve a different function than the flanges themselves,  
[25] don't they?

1—12:20

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[1] MR. HILTON: Objection.

[2] Q: (By Mr. Mims) Let me — let me —

[3] A: Yeah, if you could restate your question.

[4] Q: Yeah. You — you put — when you cut out that

[5] metal, you cut it so it had tabs on the outside of the

[6] flanges. Correct?

[7] A: That's right.

[8] Q: And the function of those tabs is to serve as a

[9] means for the clamping member to rotate around —

[10] A: That's right.

[11] Q: That's right?

[12] A: That's correct.

[13] Q: So, those tabs actually serve a different

[14] function than the flange do, don't they?

[15] MR. HILTON: Objection.

[16] A: Those tabs serve — those tabs are connected to

[17] the flange. Those tab —

[18] Q: (By Mr. Mims) But they serve a different

[19] function to allow the surrounding member, if you like,

[20] or the clamping member to go around it?

[21] A: Yes.

[22] Q: And they rotate around those tabs, don't they?

[23] A: They do.

[24] Q: And, so, the clamping member, which is marked

[25] red on that exhibit, has two holes. Correct?

1—12:21

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[1] A: Yes.

[2] Q: And those two holes are there to be installed

[3] on the two tabs on the — on the bracket?

[4] A: Yes.

[5] Q: And it's those tabs that serve to take the

[6] clamping member away from the flanges so it can apply

[7] these forces we've been talking about being outside and

[8] not directly opposite?

[9] A: Correct.

[10] MR. MIMS: I have no further questions.

[11] I'll pass the witness.

[12] MR. HILTON: Just a couple on recross.

[13] FURTHER EXAMINATION

[14] BY MR. HILTON:

[15] Q: When the ProLock 1 product — do we have the

[16] product still here?

[17] MR. MIMS: This is —

[18] MR. HILTON: That's 2.

[19] MR. MIMS: Yeah, that's 2.

[20] MR. BAINE: It's under your paper there,

[21] Peter.

[22] MR. MIMS: Oh, I'm sorry.

[23] Q: (By Mr. Hilton) We've identified some terms

[24] which helps.

[25] When the ProLock 1 product is attached to

1—12:22

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[1] the side wall of the meter box —

[2] A: Uh-huh.

[3] Q: — the first flange is on the outside of the

[4] box; and it's countering a force, I understand you

[5] believe, offset from the faces of the side panels.

[6] Right? Those — those two elements —

[7] A: Correct.

[8] Q: — clamp it on the wall.

[9] What keeps the side panels from moving

[10] away? What provides the resistance to the side panels

[11] to keep that in place when clamped?

[12] Do you understand the question? Why are

[13] the side panels —

[14] A: If you could be more specific.

[15] Q: The side panels are held against the wall?

[16] A: That's correct.

[17] Q: What's applying a force to hold them against

[18] the wall?

[19] A: What is applying a force?

[20] Q: Right.

[21] A: The lever.

[22] Q: Right. And the lev- — but the lever isn't

[23] pushing on the side walls, is it?

[24] A: No, it is not.

[25] Q: What's the lever pushing on?

1—12:23

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[1] A: Lever is pushing on the clamping member and

[2] also putting a force on the tab coming off the second

[3] flange.

[4] Q: Right. And that tab is part of the second

[5] flange?

[6] A: Yeah. It's coming off the second flange;

[7] that's right.

[8] MR. HILTON: Okay. I have no further

[9] questions.

[10] MR. MIMS: I think we're finished.

[11] MR. HILTON: Thank you very much for your

[12] time.

[13] THE VIDEOGRAPHER: 12:23, we're off

[14] record.

[15] (Deposition concluded at 12:23 p.m.)

[16]

[17]

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[19]

[20]

[21]

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[23]

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Page 120

[1] CHANGES AND SIGNATURE  
[2] DATE: 11/29/2007 WITNESS: JOHN STACHOWIAK  
[3] PAGE LINE CHANGE REASON  
[4]  
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Page 121

[1] I, JOHN STACHOWIAK, have read the foregoing  
[2] deposition and hereby affix my signature that same is  
[3] true and correct, except as noted above.  
[4]  
[5]  
[6] JOHN STACHOWIAK  
[7] THE STATE OF \_\_\_\_\_ )  
[8] COUNTY OF \_\_\_\_\_ )  
[9]  
[10] Before me, \_\_\_\_\_, on this day  
[11] personally appeared, known to me or proved to me on the  
[12] oath of \_\_\_\_\_ or through  
[13] \_\_\_\_\_ (description of identity card  
[14] or other document) to be the person whose name is  
[15] subscribed to the foregoing instrument and acknowledged  
[16] to me that he/she executed the same for the purpose and  
[17] consideration therein expressed.  
[18] Given under my hand and seal of office on this \_  
[19] day of \_\_\_\_\_, \_\_\_\_\_.  
[20]  
[21]  
[22] NOTARY PUBLIC IN AND FOR  
[23] THE STATE OF \_\_\_\_\_  
[24] My Commission Expires: \_\_\_\_\_  
[25]

Page 122

[1] IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
[2]  
[3] INNER-TITE CORP., )  
[4] Plaintiff )  
[5] vs. ) CASE NO. 04-40219-FDS  
[6] DEWALCH TECHNOLOGIES, INC., )  
[7] Defendant. )  
[8]  
[9] REPORTER'S CERTIFICATE  
[10] ORAL VIDEOTAPED DEPOSITION OF JOHN STACHOWIAK  
[11] November 29, 2007  
[12]  
[13] I, BEVERLY ANN SMITH, Certified Shorthand  
[14] Report, hereby certify to the following:  
[15] That the witness, JOHN STACHOWIAK, was duly  
[16] sworn by the officer and that the transcript of the oral  
[17] deposition is a true record of the testimony given by  
[18] the witness;  
[19] That the deposition transcript was submitted  
[20] on \_\_\_\_\_, \_\_\_\_\_, to the witness or to the  
[21] attorney for the witness for examination, signature and  
[22] return to me by \_\_\_\_\_;  
[23] That pursuant to information given to the  
[24] deposition officer at the time said testimony was taken,  
[25] the following includes all parties of record and the  
amount of time used by each party at the deposition:  
William E. Hilton ( 1 h 30 m)

Page 123

[1] Peter E. Mims ( 1 h 10 m)  
Attorney for Defendant  
[2] Andrew Baine ( 0 h 0 m)  
Attorney for Defendant  
[3]  
[4] I further certify that I am neither counsel  
[5] for, related to, nor employed by any of the parties  
[6] or attorneys in the action in which this proceeding  
[7] was taken, and further that I am not financially or  
[8] otherwise interested in the outcome of the action.  
[9] Certified to by me this \_\_\_\_\_ day of  
[10] \_\_\_\_\_, \_\_\_\_\_.  
[11]  
[12]  
[13]  
[14] Beverly Ann Smith, CSR  
Texas CSR 3554  
Expiration: 12/31/2008  
[15] Continental Court Reporters  
Firm Registration No. 61  
[16] 2777 Allen Parkway, Suite 600  
Houston, Texas 77019  
[17]  
[18]  
[19]  
[20]  
[21]  
[22]  
[23]  
[24]  
[25]

JOHN STACHOWIAK

INNER-TITE CORP. v.

November 29, 2007

DEWALCH TECHNOLOGIES, INC.

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[1] FURTHER CERTIFICATION

[2]

[3] The original deposition was/was not returned to the

[4] deposition officer on \_\_\_\_\_;

[5] If returned, the attached Changes and Signature

[6] page contains any changes and the reasons therefor;

[7] If returned, the original deposition was delivered

[8] to Peter E. Mims, Custodial Attorney;

[9] That \$ \_\_\_\_\_ is the deposition officer's charges

[10] to the Defendant for preparing the original deposition

[11] transcript and any copies of exhibits;

[12] That the deposition was delivered in accordance

[13] with Rule 30(f), and that a copy of this certificate was

[14] served on all parties shown herein.

[15] Certified to by me this \_\_\_\_\_ day of \_\_\_\_\_,

[16]

[17]

[18]

[19]

[20] Beverly Ann Smith, CSR

Texas CSR 3554

[21] Expiration: 12/31/2008

Continental Court Reporters

[22] Firm Registration No. 61

2777 Allen Parkway, Suite 600

[23] Houston, Texas 77019

[24]

[25]